

Senate File 2155 - Introduced

SENATE FILE 2155
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SSB 3059)

A BILL FOR

1 An Act concerning the rights of parties to private construction
2 contracts and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **573B.1 Title.**

2 This chapter shall be known as the "*Iowa Fairness in Private*
3 *Construction Contracts Act*".

4 Sec. 2. NEW SECTION. **573B.2 Definitions.**

5 For the purposes of this chapter:

6 1. "*Construction*" means the same as defined in section
7 103A.3.

8 2. "*Contract*" means the same as defined in section 554.1201.

9 3. "*Contractor*" means a person or entity that engages in
10 the business of construction and has a contract with an owner
11 of the real property or with a trustee, agent, or spouse of an
12 owner.

13 4. "*Owner*" means the same as defined in section 103A.3.

14 5. "*Prime rate*" means the prime rate charged by banks
15 on short-term business loans, as determined by the board of
16 governors of the federal reserve system and published in the
17 federal reserve bulletin.

18 6. "*Private construction*" means construction of or on
19 private property.

20 7. "*Retainage*" means money earned by a contractor or
21 subcontractor but withheld to ensure proper performance by the
22 contractor or subcontractor.

23 8. "*Subcontractor*" means a person or entity that engages
24 in the business of construction, except a person or entity
25 entering into a contract directly with the owner of the real
26 property.

27 Sec. 3. NEW SECTION. **573B.3 Private construction contracts**
28 **— payment — provisions against public policy — failure to pay.**

29 1. A person or entity that enters into a contract for
30 private construction shall make all payments pursuant to the
31 terms of the contract and in accordance with this chapter.

32 2. A provision in a contract for private construction
33 that purports to waive, release, or extinguish the right to
34 resolve disputes through litigation in court or substantive or
35 procedural rights in connection with such litigation is void

1 and unenforceable as contrary to public policy.

2 3. A provision in a contract for private construction
3 providing that a payment from a contractor or subcontractor
4 to a subcontractor is contingent or conditioned upon receipt
5 of a payment from any other private party is no defense to a
6 claim to enforce a mechanic's lien or bond to secure payment of
7 claims pursuant to chapter 572.

8 4. A contract for private construction shall provide that
9 payment of amounts due a contractor from an owner, except
10 retainage, shall be made within thirty days after the owner
11 receives a timely, properly completed, undisputed request for
12 payment. If an owner fails to pay a contractor by the date
13 payment is due, the owner shall pay interest to the contractor
14 beginning on the first business day after payment is due,
15 computed at the prime rate plus one percent per year.

16 5. For a contract for private construction, a contractor
17 shall pay a subcontractor any amounts due within ten business
18 days of whichever of the following is later:

19 a. Receipt of payment by the contractor from the owner,
20 including payment of retainage, if retainage is released by the
21 owner.

22 b. The date payment to the subcontractor is due pursuant to
23 the contract.

24 6. If a contractor fails to pay a subcontractor pursuant
25 to subsection 5, the contractor shall pay interest to the
26 subcontractor beginning on the first business day after payment
27 becomes due, computed at the prime rate plus one percent per
28 year.

29 7. The provisions of subsections 5 and 6 shall apply to a
30 payment from a subcontractor to its subcontractor.

31 Sec. 4. NEW SECTION. 573B.4 Retainage.

32 1. An owner, contractor, or subcontractor may withhold
33 no more than five percent retainage from the amount of any
34 undisputed payment due.

35 2. If an owner, contractor, or subcontractor fails to pay

1 in a private construction contract that waives, releases, or
2 extinguishes the right to resolve disputes through litigation
3 is void as contrary to public policy.

4 The bill provides that a provision in a contract for
5 private construction making a payment from a contractor or
6 subcontractor to a subcontractor contingent or conditioned upon
7 receipt of a payment from any other private party is no defense
8 to a claim to enforce a mechanic's lien or bond to secure
9 payment of claims pursuant to Code chapter 572.

10 The bill requires that a contract for private construction
11 provide that payment of amounts due a contractor from an owner,
12 except retainage, shall be made within 30 days after the owner
13 receives a timely, properly completed, undisputed request for
14 payment. The bill provides that if an owner fails to pay a
15 contractor by the date payment is due, the owner must pay
16 interest to the contractor beginning the first business day
17 after payment is due.

18 The bill provides that for a contract for private
19 construction, a contractor must pay a subcontractor any
20 amounts due within 10 business days of the later of either
21 the receipt of payment by the contractor from the owner,
22 including retainage, if released, or the date payment to the
23 subcontractor is due pursuant to the subcontract. The bill
24 provides that if a contractor fails to pay a subcontractor in
25 this way, the contractor must pay interest to the subcontractor
26 beginning the first business day after payment is due.

27 The bill provides that an owner, contractor, or
28 subcontractor may withhold no more than 5 percent retainage
29 from the amount of any undisputed payment due. The bill
30 provides that if an owner, contractor, or subcontractor fails
31 to pay retainage as required, they must pay interest beginning
32 on the first business day after the payment was due. The
33 bill defines "retainage" as money earned by a contractor or
34 subcontractor but withheld to ensure proper performance by the
35 contractor or subcontractor.

1 The bill provides that any action to enforce the provisions
2 of the bill, including arbitration, will take place in the
3 county where the applicable real property is located.

4 The bill provides that the rights and duties prescribed
5 by the bill cannot be waived or varied under the terms
6 of a contract, and a provision of a contract doing so is
7 unenforceable.

8 The bill does not apply to single-family residential housing
9 and multifamily residential housing of four units or less or
10 public works, public utility, or public improvement projects.

11 The bill applies to construction contracts entered into on
12 or after the effective date of the bill.